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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

THE ASSINIBOINE AND SIOUX
TRIBES OF THE FORT PECK INDIAN
RESERVATION,

Plaintiff,
v.

THE U.S. DEPARTMENT OF THE
INTERIOR, *et al.*,

Defendants,
and

TRANSCANADA KEYSTONE
PIPELINE, LP, *et al.*,

Defendant-Intervenors.

CV 20-44-BMM-JTJ

JOINT MOTION FOR STAY

Defendants U.S. Department of the Interior *et al.* (“Defendants”), Plaintiff Assiniboine and Sioux Tribes of the Fort Peck Reservation, and Defendant-Intervenors TC Energy *et al.* jointly move for a stay of all deadlines and proceedings in this case for sixty days. Defendants’ reply in support of their motion to dismiss the two new National Historic Preservation Act claims filed by Plaintiff is due February 9, and Defendants’ opening summary judgment brief is due February 15, 2021. This case involves the U.S. Bureau of Land Management’s (“BLM”) approval of a right-of-way for the Keystone XL Pipeline and the U.S. Army Corps of Engineers’ (“Corps”) issuance of a permit for the pipeline pursuant to the Rivers and Harbors Act, 33 U.S.C. § 408. The parties request this stay in light of the President’s revocation of the Presidential permit allowing the pipeline to cross the border.

In a January 20, 2021 Executive Order, President Joseph R. Biden revoked the March 29, 2019 Presidential Permit granted to TransCanada Keystone Pipeline, L.P., for the construction, connection, operation, and maintenance of pipeline facilities at the international border of the United States and Canada. *See Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*, 86 Fed. Reg. 7,037, 7,041 (Jan. 20, 2010). After the issuance of the executive order revoking the border-crossing permit, TC Energy announced that it would suspend advancement of the project due to the revocation of the Presidential

Permit.¹

The requested stay will not prejudice any party because TC Energy does not intend to do any further construction of the pipeline or construct new pump stations over the next sixty days. TC Energy intends to consider the impact of the President's decision on the project and does not intend to move forward with pipeline construction while it conducts that evaluation. If that changes and TC Energy opts to move forward with pipeline construction or construction of new pump stations, it will notify the Court of those plans sixty days in advance of moving ahead with construction. Such notice does not apply to actions taken by TC Energy in response to an order from the government, dismantling facilities or movement of equipment, or required environmental protection measures.

Additionally, TC Energy does not need to provide notice of other security or maintenance activities for existing infrastructure. TC Energy also agrees that, during the sixty-day stay, it will not construct any new work force camps and that occupation of the camps will be limited to staff necessary for security, environmental protection, securing TransCanada's assets that are already in place, and/or dismantling the camps. TC Energy agrees to provide at least thirty days' notice to the parties prior to construction or occupation of the camps by workers

¹ See <https://www.tcenergy.com/announcements/2021-01-20-tc-energy-disappointed-with-expected-executive-action-revoking-keystone-xl-presidential-permit/>.

engaging in anything other than security, environmental protection, asset protection, and/or dismantling the camps.

In addition, in order for any construction activity to occur on federal lands under the authority of the U.S. Bureau of Land Management (“BLM”) and the U.S. Army Corp of Engineers (“Corps”), TC Energy must request a notice to proceed from BLM. *See* U.S. Bureau of Land Management, Record of Decision, Keystone XL Pipeline Project, Decision to Grant Right-of-Way and Temporary Use Permit on Federal Land at 7 (Jan. 20, 2020). *See* BLM-00149.² If such a request were submitted, BLM would need to evaluate it to ensure that TC Energy complied with the required terms of the right-of-way grant, and that evaluation would likely take at least several weeks. No such application has been submitted, and if an application is submitted, Defendants will notify the Court.

Further, TC Energy is required to schedule a preconstruction conference with BLM prior to commencing any construction or ground-disturbing activities on federal land and must notify BLM at least thirty days in advance of such preconstruction conference. *See* U.S. Bureau of Land Management, Right-of-Way Grant MTM-98191, Temporary Use Permit MTM-98191-01, at Exhibit B, stipulation 4. *See* BLM-00022-23. TC Energy has not provided BLM notice of a

² Citations to “BLM-xxxxx” refer to the documents in BLM’s administrative record. *See* ECF No. 62.

preconstruction conference, but if TC Energy does so, Defendants will inform the Court.

Finally, TC Energy has not yet received a permit pursuant to Rivers and Harbors Act section 10, 33 U.S.C. 403, which is required before TC Energy can construct a pipeline across the Missouri River below the Fort Peck Dam. It is uncertain when the Corps will make a decision on that permit.

In light of these developments, the parties respectfully request that the Court stay the current litigation deadlines for sixty days, so that the parties may determine what further proceedings may be necessary in this case. *See Landis v. N. American Co.*, 299 U.S. 248, 254 (1936) (a court has inherent authority to stay litigation). During that time, incoming officials within the U.S. Department of the Interior and other agencies will evaluate the previously issued authorizations for the pipeline. The agencies will evaluate whether the authorizations should be rescinded or suspended in light of the President's action or for other reasons. Given that many positions within the respective agencies' leadership have not yet been filled, this process will likely take several weeks.

At the end of the sixty-day period, the parties will advise the Court whether further proceedings are necessary and, if so, propose a revised briefing schedule. If the parties need additional time to discuss potential further proceedings, the parties will submit a status report and request additional time to

continue their discussions. The parties retain the right to ask the Court to lift the stay in response to changes in conditions on the ground.

DATED: February 3, 2021

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1(d)(2)(E), the foregoing brief is proportionately spaced, has a typeface of 14 points, and contains 937 words, excluding the tables, caption, signature, certificate of compliance, and certificate of service.

/s/ Luther L. Hajek _____
LUTHER L. HAJEK
U.S. Department of Justice

CERTIFICATE OF SERVICE

I hereby certify that on February 3, 2021, a copy of the foregoing was served on all counsel of record via the Court's CM/ECF system.

/s/ Luther L. Hajek

LUTHER L. HAJEK
U.S. Department of Justice